

South Dakota One Call Notification Board



South Dakota  
ONE CALL  
1-800-781-7474

1012 North Syracuse Ave  
Stouffville, SD 57110

TEL/Fax: (605) 339-0529  
E-mail: [exedir@sdonecall.com](mailto:exedir@sdonecall.com)

October 21, 2004

American Underground  
23813 474<sup>th</sup> Avenue  
Dell Rapids, SD 57022

Crooks Municipal Utilities  
108 East Main Street  
Crooks, SD 57020

Under the authority granted by SDCL 49-7A-22, the Enforcement Committee of the South Dakota One Call Notification Board met on October 20, 2004, to determine whether there is probable cause to believe that a violation has occurred relative to Complaint OC04-011, OC04-012, OC04-013 and OC04-014 filed by Crooks Municipal Utilities against American Underground Sprinklers.

By a unanimous vote of the Enforcement Committee, the recommended resolutions to the alleged violations included in this complaint were determined to be as follows:

**Complaint OC04-011 (A)**

**Alleged Violation of SDCL 49-7A-5 Notification of Proposed Excavation**

The Enforcement Committee found that there was probable cause that American Underground Sprinklers had violated SDCL 49-7A-5 by commencing excavation prior to the forty-eight hour advance notification required by the statute.

The committee recommends a penalty of five-hundred dollars (\$500.00) with three-hundred fifty dollars (\$300.00) suspended on the basis that American Underground Sprinklers fully comply with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC04-011, OC04-012, OC04-013 and OC04-014 and the payment of the associated penalty.

**Complaints OC04-012, OC04-013 and OC04-014**

**Alleged Violations of SDCL 49-7A-5 Notification of Proposed Excavation**

In each of the above alleged violations, the Enforcement Committee found that there was probable cause that American Underground Sprinklers had violated SDCL 49-7A-5 by commencing excavation prior to the forty-eight hour advance notification required by the statute.

In each of the above violations, the Enforcement Committee recommends a penalty of five-hundred dollars (\$500.00) with five-hundred fifty dollars (\$500.00) suspended on the basis that American Underground Sprinklers fully comply with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of the complaint.

**Complaint OC04-011 (B)**

**Alleged Violation of SDCL 49-7A-8 Location of Underground Facilities - Marking**  
The Enforcement Committee found that there was probable cause that American Underground Sprinklers had violated SDCL 49-7A- by not maintaining a minimum horizontal clearance of 18 inches between a marked underground facility and the cutting edge of mechanical equipment.

The Enforcement Committee recommends a penalty of five-hundred dollars (\$500.00) with five-hundred fifty dollars (\$500.00) suspended on the basis that American Underground Sprinklers fully comply with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of the complaint.

In summary, the resolution of the complaints would involve a payment of two-hundred dollars (\$200) with two-thousand three hundred dollars suspended on the conditions that your firm fully complies with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of the resolution and payment of the assessed penalty.

The specific findings and recommendation of the Enforcement Committee are summarized on the attached form.

Under SDCL 49-7A-27 either party may accept the recommendation of the Enforcement Committee or reject the recommendation of the Enforcement Committee by requesting a formal hearing on the violation alleged in this complaint. Your decision should be reflected on the second page of the attachment. **Please return the signed form prior to the close of business on November 12, 2004 to:**

South Dakota One Call Notification Board  
1012 N. Sycamore Avenue  
Sioux Falls, SD 57110-5747

If both parties accept this resolution, the South Dakota One Call Notification Board is required to accept the resolution and close this complaint. If either party rejects the Enforcement Committee resolution of the alleged violations, the South Dakota One Call Notification Board will conduct a hearing as a contested case under Chapter 1-26 to resolve the allegation alleged in the rejected complaint. Following this hearing, the Board shall either render a decision dismissing the complaint for insufficient evidence or shall impose a penalty pursuant to SDCL 49-7A-18 or SDCL 49-7A-19.

Pursuant to SDCL 15-6-55, failure to answer this Complaint could result in a default judgment being issued against you. Appropriate liens and other legal collection actions could result. **You are strongly urged to reply to this Notice in the time frame described above and to obtain the advice of counsel should you have any legal questions.**

Sincerely,

Larry L. Englerth  
Executive Director

**ENFORCEMENT COMMITTEE ACTION**  
**OC04-011, OC04-012, OC04-013, OC04-014**  
**Crooks Municipal Utilities vs. American Underground Sprinkler**

**FINDINGS:**  
**OC04-011 (A), OC04-012, OC04-013, OC04-014**

**Alleged Violation of SDCL 49-7A-5 Notification of Proposed Excavation**

**OC04-011 (A),**

Allegation is made by Crooks Municipal Utilities that American Underground Sprinkler commenced excavation at 501 Kelsey Circle, Crooks, SD on Ticket Number 042320076 on August 19, 2004, prior to the start date on the locate request of August 23, 2004.

The response received from American Underground Sprinkler did not dispute the allegation that excavation activity had commenced prior to the start date on the ticket.

In reviewing the complaint filed by Crooks Municipal Utilities and the response from American Underground Sprinkler, the committee determined the following:

1. American Underground Sprinkler had commenced excavation activity prior to the start date on the locate request.
2. Crooks Municipal Utilities had not located or cleared the locate request prior to the start of excavation by American Underground Sprinkler.

Based on the information noted above, the Committee found that there was probable cause that American Underground Sprinkler had violated SDCL 49-7A-5 by commencing excavation prior to the start date on ticket number 042320076.

**OC04-012**

Allegation is made by Crooks Municipal Utilities that American Underground Sprinkler commenced excavation at 505 Kelsey Circle, Crooks, SD on Ticket Number 042320078 on August 19, 2004, prior to the start date on the locate request of August 23, 2004.

The response received from American Underground Sprinkler did not dispute the allegation that excavation activity had commenced prior to the start date on the ticket.

In reviewing the complaint filed by Crooks Municipal Utilities and the response from American Underground Sprinkler, the committee determined the following:

1. American Underground Sprinkler had commenced excavation activity prior to the start date on the locate request.
2. Crooks Municipal Utilities had not located or cleared the locate request prior to the start of excavation by American Underground Sprinkler.

Based on the information noted above, the Committee found that there was probable cause that American Underground Sprinkler had violated SDCL 49-7A-5 by commencing excavation prior to the start date on ticket number 042320078.

### **OC04-013**

Allegation is made by Crooks Municipal Utilities that American Underground Sprinkler commenced excavation at 600 Kelsey Circle, Crooks, SD on Ticket Number 042510073 on September 7, 2004, prior to the start date on the locate request of September 9, 2004.

The response received from American Underground Sprinkler did not dispute the allegation that excavation activity had commenced prior to the start date on the ticket.

In reviewing the complaint filed by Crooks Municipal Utilities and the response from American Underground Sprinkler, the committee determined the following:

1. American Underground Sprinkler had commenced excavation activity prior to the start date on the locate request.
2. Crooks Municipal Utilities had not located or cleared the locate request prior to the start of excavation by American Underground Sprinkler.

Based on the information noted above, the Committee found that there was probable cause that American Underground Sprinkler had violated SDCL 49-7A-5 by commencing excavation prior to the start date on ticket number 042510073.

### **OC04-014**

Allegation is made by Crooks Municipal Utilities that American Underground Sprinkler commenced excavation at 601 Kelsey Circle, Crooks, SD on Ticket Number 042510074 on September 7, 2004, prior to the start date on the locate request of September 9, 2004.

The response received from American Underground Sprinkler did not dispute the allegation that excavation activity had commenced prior to the start date on the ticket.

In reviewing the complaint filed by Crooks Municipal Utilities and the response from American Underground Sprinkler, the committee determined the following:

1. American Underground Sprinkler had commenced excavation activity prior to the start date on the locate request.
2. Crooks Municipal Utilities had not located or cleared the locate request prior to the start of excavation by American Underground Sprinkler.

Based on the information noted above, the Committee found that there was probable cause that American Underground Sprinkler had violated SDCL 49-7A-5 by commencing excavation prior to the start date on ticket number 042510074.

**ENFORCEMENT COMMITTEE ACTION AGREEMENT**  
**OC04-011, OC04-012, OC04-013, OC04-014**  
**Crooks Municipal Utilities vs. American Underground Sprinkler**

**FINDINGS:**

**OC04-011 (A), OC04-012, OC04-013, OC04-014**

**Alleged Violation of SDCL 49-7A-5 Notification of Proposed Excavation**

**OC04-011 (A),**

Allegation is made by Crooks Municipal Utilities that American Underground Sprinkler commenced excavation at 501 Kelsey Circle, Crooks, SD on Ticket Number 042320076 on August 19, 2004, prior to the start date on the locate request of August 23, 2004.

The response received from American Underground Sprinkler did not dispute the allegation that excavation activity had commenced prior to the start date on the ticket.

In reviewing the complaint filed by Crooks Municipal Utilities and the response from American Underground Sprinkler, the committee determined the following:

1. American Underground Sprinkler had commenced excavation activity prior to the start date on the locate request.
2. Crooks Municipal Utilities had not located or cleared the locate request prior to the start of excavation by American Underground Sprinkler.

Based on the information noted above, the Committee found that there was probable cause that American Underground Sprinkler had violated SDCL 49-7A-5 by commencing excavation prior to the start date on ticket number 042320076.

**OC04-012**

Allegation is made by Crooks Municipal Utilities that American Underground Sprinkler commenced excavation at 505 Kelsey Circle, Crooks, SD on Ticket Number 042320078 on August 19, 2004, prior to the start date on the locate request of August 23, 2004.

The response received from American Underground Sprinkler did not dispute the allegation that excavation activity had commenced prior to the start date on the ticket.

In reviewing the complaint filed by Crooks Municipal Utilities and the response from American Underground Sprinkler, the committee determined the following:

1. American Underground Sprinkler had commenced excavation activity prior to the start date on the locate request.
2. Crooks Municipal Utilities had not located or cleared the locate request prior to the start of excavation by American Underground Sprinkler.

Based on the information noted above, the Committee found that there was probable cause that American Underground Sprinkler had violated SDCL 49-7A-5 by commencing excavation prior to the start date on ticket number 042320078.

**OC04-013**

Allegation is made by Crooks Municipal Utilities that American Underground Sprinkler commenced excavation at 600 Kelsey Circle, Crooks, SD on Ticket Number 042510073 on September 7, 2004, prior to the start date on the locate request of September 9, 2004.

The response received from American Underground Sprinkler did not dispute the allegation that excavation activity had commenced prior to the start date on the ticket.

In reviewing the complaint filed by Crooks Municipal Utilities and the response from American Underground Sprinkler, the committee determined the following:

1. American Underground Sprinkler had commenced excavation activity prior to the start date on the locate request.
2. Crooks Municipal Utilities had not located or cleared the locate request prior to the start of excavation by American Underground Sprinkler.

Based on the information noted above, the Committee found that there was probable cause that American Underground Sprinkler had violated SDCL 49-7A-5 by commencing excavation prior to the start date on ticket number 042510073.

**OC04-014**

Allegation is made by Crooks Municipal Utilities that American Underground Sprinkler commenced excavation at 601 Kelsey Circle, Crooks, SD on Ticket Number 042510074 on September 7, 2004, prior to the start date on the locate request of September 9, 2004.

The response received from American Underground Sprinkler did not dispute the allegation that excavation activity had commenced prior to the start date on the ticket.

In reviewing the complaint filed by Crooks Municipal Utilities and the response from American Underground Sprinkler, the committee determined the following:

1. American Underground Sprinkler had commenced excavation activity prior to the start date on the locate request.
2. Crooks Municipal Utilities had not located or cleared the locate request prior to the start of excavation by American Underground Sprinkler.

Based on the information noted above, the Committee found that there was probable cause that American Underground Sprinkler had violated SDCL 49-7A-5 by commencing excavation prior to the start date on ticket number 042510074.

**RECOMMENDATION**  
**OC04-011 (A), OC04-012, OC04-013, OC04-014**

**OC04-011 (A)**

**VIOLATION OF SOUTH DAKOTA SDCL 49-7A-5:**

The Committee found that there was probable cause that American Underground Sprinkler had violated SDCL 49-7A-5 by commencing excavation at 501 Kelsey Circle, Crooks, SD on Ticket Number 042320076 on August 19, 2004, prior to the start date on the locate request of August 23, 2004.

**PROPOSED PENALTY FOR THIS VIOLATION AUTHORIZED UNDER SDCL 49-7A-18:**

The committee recommends a penalty of five hundred dollars (\$500.00) with three hundred dollars (\$300.00) suspended on the basis that American Underground Sprinkler fully comply with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC04-011 (A) and the payment of the associated penalty.

**OC04-012**

**VIOLATION OF SOUTH DAKOTA SDCL 49-7A-5:**

The Committee found that there was probable cause that American Underground Sprinkler had violated SDCL 49-7A-5 by commencing excavation at 505 Kelsey Circle, Crooks, SD on Ticket Number 042320078 on August 19, 2004, prior to the start date on the locate request of August 23, 2004.

**PROPOSED PENALTY FOR THIS VIOLATION AUTHORIZED UNDER SDCL 49-7A-18:**

The committee recommends a penalty of five hundred dollars (\$500.00) with five hundred dollars (\$500.00) suspended on the basis that American Underground Sprinkler fully comply with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC04-012.

**OC04-013**

**VIOLATION OF SOUTH DAKOTA SDCL 49-7A-5:**

The Committee found that there was probable cause that American Underground Sprinkler had violated SDCL 49-7A-5 by commencing excavation at 600 Kelsey Circle, Crooks, SD on Ticket Number 042510073 on September 7, 2004, prior to the start date on the locate request of September 9, 2004.

**PROPOSED PENALTY FOR THIS VIOLATION AUTHORIZED UNDER SDCL 49-7A-18:**

The committee recommends a penalty of five hundred dollars (\$500.00) with five hundred dollars (\$500.00) suspended on the basis that American Underground Sprinkler fully comply with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC04-013.

**OC04-014**

**VIOLATION OF SOUTH DAKOTA SDCL 49-7A-5:**

The Committee found that there was probable cause that American Underground Sprinkler had violated SDCL 49-7A-5 by commencing excavation at 601 Kelsey Circle, Crooks, SD on Ticket Number 042510074 on September 7, 2004, prior to the start date on the locate request of September 9, 2004.

**PROPOSED PENALTY FOR THIS VIOLATION AUTHORIZED UNDER SDCL 49-7A-18:**

The committee recommends a penalty of five hundred dollars (\$500.00) with five hundred dollars (\$500.00) suspended on the basis that American Underground Sprinkler fully comply with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC04-014.

**ACCEPTANCE OR REJECTION BY PARTIES**  
**COMPLAINT OC04-011, OC04-012, OC04-013, OC04-014**

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATIONS ALLEGED IN COMPLAINT DOCKETS OC04-011, OC04-012, OC04-013, and OC04-014.

IF BOTH PARTIES INVOLVED IN THESE COMPLAINTS ACCEPT THE COMMITTEE RESOLUTION TO THE VIOLATIONS ALLEGED IN COMPLAINT DOCKETS OC04-011, OC04-012, OC04-013, OC04-014, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT DOCKETS OC04-011, OC04-012, OC04-013, and OC04-014.

IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO THE VIOLATIONS ALLEGED IN COMPLAINT DOCKETS OC04-011, OC04-012, OC04-013, and OC04-014. THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO THE VIOLATIONS ALLEGED IN COMPLAINT DOCKETS OC04-011, OC04-012, OC04-013, and OC04-014. THIS HEARING SHALL BE CONDUCTED AS A CONTESTED CASE UNDER CHAPTER 1-26. FOLLOWING THE HEARING, THE BOARD SHALL EITHER RENDER A DECISION DISMISSING THE COMPLAINT FOR INSUFFICIENT EVIDENCE OR SHALL IMPOSE A PENALTY PURSUANT TO THE PROVISIONS OF SDCL 49-7A-18 OR SDCL 49-7A-19.

TO ACCEPT OR REJECT THE RESOLUTION OF THE ALLEGE VIOLATIONS, YOU SHOULD COMPLETE THE FOLLOWING AND RETURN TO THE ADDRESS BELOW PRIOR TO THE CLOSE OF BUSINESS ON NOVEMBER 12, 2004.

SOUTH DAKOTA ONE CALL NOTIFICATION BOARD  
1012 N. SYCAMORE AVENUE  
SIOUX FALLS, SD 57110-5747

PURSUANT TO SDCL 15-6-55, FAILURE TO ANSWER THIS COMPLAINT RESOLUTION COULD RESULT IN A DEFAULT JUDGEMENT BEING ISSUED AGAINST YOU. APPROPRIATE LIENS AND OTHER LEGAL COLLECTION ACTIONS COULD RESULT.

10/27/04

**OC04-011, OC04-012, OC04-013, OC04-014**

**VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION**

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-011 (A) VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION.

Henry Beck 10-25-04  
Signature

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-012 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION.

Henry Beck 10-25-04  
Signature

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-013 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION.

Henry Beck 10-25-04  
Signature

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-014 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION.

Henry Beck 10-25-04  
Signature

**VIOLATION OF SDCL 49-7A-8 LOCATION OF UNDERGROUND FACILITY - MARKING**

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-011 (B) VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION.

Henry Beck 10-25-04  
Signature

**VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION**

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-011 (A) VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION.

\_\_\_\_\_  
Signature

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-012 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION.

\_\_\_\_\_  
Signature

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-013 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION.

\_\_\_\_\_  
Signature

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-014 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION.

\_\_\_\_\_  
Signature

**VIOLATION OF SDCL 49-7A-8 LOCATION OF UNDERGROUND FACILITY - MARKING**

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-011 (B) VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION.

\_\_\_\_\_  
Signature